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REMARKS

ON THE

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PENAL CLAUSES

OF THE

NOVA SCOTIA MEDICAL ACT,

FOR THE GUIDANCE OF

Practitioners of Medicine and Surgery
in that Province.

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REMARKS

ON THE

Penal Clauses of the Nova Scotia Medical Act.

The following observations are intended for the guidance of members of the medical profession of Nova Scotia, in carrying into effect the penal clauses of Chapter 24 of the Revised Statutes, entitled, "Practitioners of Medicine and Surgery." Members of the profession will bear in mind that no prosecution or action can be successfully conducted unless the evidence against the accused party is sufficient to bring the case within the rules hereinafter laid down.

SECTION 19.

This section provides that any medical practitioner convicted of felony or adjudged by the Medical Board guilty of infamous conduct in any professional respect shall thereby forfeit his right to registration; or, if registered, shall be liable to have his name erased from the register.

1. In the first case the Registrar should be furnished with the Christian and surname of the person and the offence for which he was convicted, together with his last known address, and the place and court wherein he was tried.

2. What is "infamous conduct in any professional respect" is not defined by the Act, but is a question to be determined by the Board on the facts of each particular case, assisted by the decisions of the courts. In England it was held under a similar enactment that the Legislature

had constituted the General Council the sole judges of the question whether a medical practitioner had been guilty of infamous conduct in any professional respect. This is rather a question of professional ethics than of law.

3. In case any member of the profession becomes aware of conduct on the part of a registered practitioner which might be deemed infamous (or disgraceful) in a professional respect, he should communicate to the Registrar the facts in detail, transmitting a copy of any written or printed matter published, circulated or advertised by such practitioner, and should state the full name and present place of residence of such practitioner. The Registrar should also be furnished with the names and addresses of all persons who could evidence oral or written of the acts charged. Should the acts above intimated have been committed by any person who intends to apply for registration the same course should be pursued.

SECTION 26.

This section enacts that a penalty may be recovered from any person not registered or licensed under the provisions of the Act who does one or more of the following acts :

(a) Practices physic, surgery or midwifery, for hire, gain or hope of reward ;

(b) Wilfully or falsely pretends to be a physician, doctor of medicine, surgeon or general practitioner ;

(c) Takes or uses any name, title, addition or description implying or calculated to lead people to infer that he is registered under the Medical Act ;

(d) Professes by public advertisement, card, circular, sign or otherwise, to practice physic, surgery or midwifery, or to give advice therein, or in anywise to lead people to infer that he is qualified to practice physic, surgery or midwifery in this Province.

The penalty is the sum of twenty dollars for each day that such person practices or leads people to infer that he is practising.

.1 The person laying before the Registrar or Board a charge under this section must submit to the Registrar in writing the following information :

(a) The full name and the place of residence of the person charged, with his occupation, if any, other than his so practising;

(b) The precise date or dates of the acts constituting practising, the taking of the name, title, etc., the pretending to be a surgeon or physician, the professing by public advertisement, etc., the practising, etc.; also the place where the acts of practice, etc., were done;

(c) The name or names of the patients visited or advised professionally by the person charged, with the addresses of such patients and persons;

(d) The character of the disease or ailment treated or dealt with, and all known particulars of the treatment or advice given;

(e) The name and address of any druggist who may have filled prescriptions or sold medicines to the person charged;

(f) The names of any other persons who know what services were rendered by the person charged to the patient or patients and who could, on being summoned as witnesses, prove what passed between the person charged and the patient or person professionally advised or treated;

(g) Copies of any newspapers containing advertisements of the accused; copies of any card, poster or local advertisement used by such person where practising;

(h) Any other facts in detail which would be helpful in establishing the charge.

2. The best evidence of practising is to show by the patients or by members of their household, or by friends who were present when the person charged attended people or treated them or prescribed for illness some specific acts which amount to practising one or other of the branches of the profession.

3. The professing to practice, or the holding himself out to the public as a practitioner, may be proved by persons to whom he has stated his willingness to act in such capacity, or who have seen any advertisement, sign or notice, either in a newspaper or poster, exposed about his premises; and in case an advertisement in a newspaper,

or the distribution of cards, is relied on in support of the charge, such advertisement should always be produced and identified. The sign upon the door or house of any such person should be copied and such copy produced.

4. An offence under this section may sometimes be proved by a druggist who has prepared prescriptions, but in all cases the best evidence is that of the patient, where the charge is the actual practice of medicine.

5. To complete proof of the charge of practising, it must be shown that what was done was done for hire, gain or hope of reward. Upon this point proof should be adduced that the person charged has taken fees or has been paid for medicines, plasters, or for services rendered, or that he has stipulated for payment, or made some bargain for remuneration either in cash or otherwise.

6. It is very important to show acts of practice or other acts constituting an offence under this section to have been committed on distinct days, the dates of which can be clearly proved, because the penalty is twenty dollars for each day on which the accused practices or leads people to infer that he is practising. The greater number of acts of practice, etc., on distinct days, the greater the penalty.

SECTION 27.

This enacts that any sum forfeited under section 26 shall be recoverable with costs, and may be sued for in the same manner as a private debt by the Board or any licensed practitioner in any of the Courts of the Province having jurisdiction to entertain suits for the recovery of sums amounting to \$80.00 and upwards. Moneys recovered belong to the Board for the use of the Board under the Medical Act, but where the information leading to such recovery has been given by some one not a member of the profession such person shall be entitled to receive one-half of the amount recovered.

1. Suits under these sections may be instituted in the County Court, or before two Justices of the Peace for the County in which the offence was committed, or in the Municipal Court in incorporated towns when the offence is committed there. If there is a certainty that more than 4 days' penalty, that is to say more than \$80.00 can be

recovered, an action may be brought in the Supreme Court of the Province. The selection of the court will depend upon the amount sued for, and should be left to the solicitor engaged to conduct the suit.

2. Before instituting any suit it is desirable to lay the particulars of the matter before the Board in the manner above indicated, even if the action is to be brought by and in the name of a practitioner.

3. It is hardly possible to frame a statement of claim to be used in any such action which would fit every case, but it may be here said that the Board is advised by counsel that it would be well to suggest to local solicitors that a specially endorsed writ should not be used for the institution of a suit, inasmuch as the sum recoverable is in the nature of a penalty.

SECTION 28.

This section places upon the person charged the burden of proving that he has the right to practise. This he may do by producing a copy of the Royal Gazette, containing the public register, with his name in it. See Section 5 of the Act.

1. In order to prove an offence under the Act it is not necessary for the Board or practitioner bringing the action to produce any proof that the person charged was not registered at the time that the offence was committed.

SECTION 30.

This section enacts that any person wilfully procuring or attempting to procure himself to be registered by making or producing, or causing to be made or produced, any false or fraudulent representation or declaration, either verbally or in writing, and any person knowingly aiding or assisting him in so doing shall be liable to a penalty of not less than one hundred dollars, to be recovered under the provisions of Section 27.

1. The evidence required to procure a conviction under this section does not differ from that required to procure the erasure of the offender's name from the register under section 19. See observations under that section.

2. In case the charge is for an attempt to commit an offence under this section all that would be necessary would be to prove an application to the Registrar for registration and the making to him of such false statements, either verbally or by the production of documents containing them.

SECTION 31.

This section prescribes a penalty of a sum not exceeding one hundred dollars for any person who shall (a) wilfully and falsely pretend to be registered under the Act, or who shall (b) wilfully and falsely take or use any name, title or description, implying that he is registered. The penalty under this section may be collected as provided by section 27.

1. For the evidence required to substantiate a charge under this section, see observations under section 26.

2. The gist of the offence under section 31 is an *intent* to deceive persons by the pretence to be registered.

It is difficult to prove the intent on which, however, may be inferred from the acts or general conduct of the party. Proof should be adduced of acts, conduct, language, or of the use of medical titles, from any of which a reasonable man of ordinary intelligence would naturally and necessarily infer that the person charged was a lawfully registered practitioner. See observations under section 26. The moneys recovered under this section are to be appropriated as provided by section 27.

SECTION 32.

This section provides for the limitation of actions and under it no suit can be commenced for any offence under the Medical Act after the expiration of one year from the date of the offence or cause of action.

1. If in a series of acts of practice, &c., some of the acts are more than a year old, while some of the series are within the year, the latter acts if in themselves they constitute a complete violation of the Act, may be separately proceeded for, and an action in respect of them would not be barred by this section.